

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: <b>12-O-10647-DFM</b>
	)	(12-O-11569; 12-O-13711;
<b>J. RANDY DORCY,</b>	)	12-O-13953); 12-N-13750 (Cons.)
	)	
<b>Member No. 170620,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<u>A Member of the State Bar.</u>	)	<b>ENROLLMENT</b>

In this matter, Respondent J. Randy Dorcy (Respondent) was charged with sixteen counts of misconduct stemming from five separate matters. Respondent failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>1</sup>

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC), and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

<sup>2</sup> If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that Respondent be disbarred from the practice of law.

### **FINDINGS AND CONCLUSIONS**

Respondent was admitted to practice law in this state on June 6, 1994, and has been a member since then.

#### **Procedural Requirements Have Been Satisfied**

On July 26, 2012, the State Bar properly filed and served an NDC on Respondent by certified mail, return receipt requested, at his membership records address. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC was returned to the State Bar by the United States Postal Service.

In addition, reasonable diligence was also used to notify Respondent of this proceeding. During the course of its investigation, the State Bar investigator made numerous attempts to contact Respondent without success. These efforts included sending letters to Respondent's membership records address, emailing letters to the email address listed on his membership records, calling and leaving messages for him at his membership records telephone number, and visiting his last known address. On September 12, 2012, the State Bar sent a letter to Respondent at his membership records address, notifying him of the State Bar's intention to file a default motion. The next day, a State Bar investigator again called Respondent's membership records phone number and conducted a database search. The database search revealed a possible alternative telephone number and the investigator called that number and left a message requesting a return call. That same day, the investigator also conducted a federal courts search.

Respondent failed to file a response to the NDC. On October 2, 2012, the State Bar filed and properly served a motion for entry of Respondent's default. The motion complied with all the requirements for a default, including supporting declarations of reasonable diligence by the State Bar investigator and deputy trial counsel declaring the additional steps taken to provide notice to Respondent. (Rule 5.80.) The motion also notified Respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on October 19, 2012. The order entering the default was served on Respondent at his membership records address by certified mail, return receipt requested. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On May 6, 2013, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with Respondent since the default was entered; (2) Respondent has other disciplinary matters pending; and (3) the Client Security Fund has not made payments resulting from Respondent's conduct.<sup>3</sup> Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on June 3, 2013.

Respondent has been disciplined on two prior occasions. Pursuant to a Supreme Court order filed on October 25, 2011, Respondent was suspended for one year, the execution of which

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<sup>3</sup> The declaration did not include an indication that Respondent has a prior record of discipline. (See Rules Proc. of State Bar, rule 5.85(A)(3).) The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence and directs the Clerk to include copies in the record of this case.

was stayed, and he was placed on probation for two years, including a 30-day period of suspension. In this matter, Respondent stipulated to three counts of misconduct, including failing to perform legal services with competence (two counts) and failing to obey a court order.

Pursuant to a Supreme Court order filed on January 13, 2012, Respondent was suspended for three years, the execution of which was stayed, and he was placed on probation for four years, including a five-month period of suspension. In this matter, Respondent stipulated to 26 counts of misconduct stemming from 16 client matters, including collecting advanced fees for mortgage loan modification services, failing to refund unearned fees, and failing to perform legal services with competence.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of Respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that Respondent is culpable as charged and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

#### **Case Number 12-O-10647 (The Hou Matter)**

Count One – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to competently perform legal services) by failing to file an answer to his client's unlawful detainer complaint or take other action on behalf of his client.

Count Two – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failing to respond to client inquiries), by failing to respond to multiple telephone messages he received from his client, requesting a status report.

Count Three – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by failing notify his client that he

would no longer be working on her legal matter and failing to take any steps to avoid reasonably foreseeable prejudice to his client.

Count Four – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees) by failing to refund unearned fees to his client, upon termination of employment.

Count Five – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a State Bar investigation), by failing to respond to the State Bar investigator's letters.

**Case Number 12-O-11569 (The Mercado Matter)**

Count Six – Respondent willfully violated Business and Professions Code section 6106.3 (collection of advanced fees for loan modification services) by collecting an advanced fee to perform loan modification services.

Count Seven – Respondent willfully violated Business and Professions Code section 6106.3 (failure to provide statement to borrower in compliance with Civil Code section 2944.6) by failing to provide a loan modification client with a separate statement containing the warning language required by Civil Code section 2944.6.

Count Eight – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by repeatedly failing to provide his client the legal services for which he was hired.

Count Nine – Respondent willfully violated Business and Professions Code section 6068, subdivision (i), by failing to respond to the State Bar investigator's letter.

**Case Number 12-O-13711 (The Popp Matter)**

Count Ten – Respondent willfully violated Business and Professions Code section 6106.3 by collecting an advanced fee to perform loan modification services.

Count Eleven – Respondent willfully violated Business and Professions Code section 6106.3 by failing to provide a loan modification client with a separate statement containing the warning language required by Civil Code section 2944.6.

Count Twelve – Respondent willfully violated Business and Professions Code section 6068, subdivision (i), by failing to respond to the State Bar investigator’s letter.

**Case Number 12-N-13750 (The Rule 9.20 Matter)**

Count Thirteen – Respondent willfully violated California Rule of Court, rule 9.20 by failing to file a declaration of compliance with rule 9.20 in conformity with an order of the California Supreme Court.

**Case Number 12-O-13953 (The McCann Matter)**

Count Fourteen – Respondent willfully violated Business and Professions Code section 6106.3 by collecting an advanced fee to perform loan modification services.

Count Fifteen – Respondent willfully violated Business and Professions Code section 6106.3 by failing to provide a loan modification client with a separate statement containing the warning language required by Civil Code section 2944.6.

Count Sixteen – Respondent willfully violated Business and Professions Code section 6068, subdivision (i), by failing to respond to the State Bar investigator’s letter.

**Disbarment is Recommended under the Rules of Procedure**

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and Respondent’s disbarment is recommended. In particular:

- (1) the NDC was properly served on Respondent under rule 5.25;
- (2) reasonable diligence was used to notify Respondent of the proceedings prior to the entry of his default, as the State Bar properly served him with the NDC and made various efforts to locate Respondent, including: calling his membership records telephone number; emailing his

membership records email address; sending letters to his membership records address;  
conducting database searches; calling a telephone number located through the database search;  
visiting his last known address; and conducting a federal courts search;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC deemed admitted by the entry of the default  
support a finding that Respondent violated a statute, rule, or court order that would warrant the  
imposition of discipline.

Despite adequate notice and opportunity, Respondent failed to participate in this  
disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court  
recommends disbarment.

## **RECOMMENDATIONS**

### **Disbarment**

The court recommends that Respondent J. Randy Dorcy be disbarred from the practice of  
law in the State of California and that his name be stricken from the roll of attorneys.

### **Restitution**

The court also recommends that Respondent be ordered to make restitution to Yan Hou in  
the amount of \$3,500 plus 10 percent interest per year from November 7, 2011. Any restitution  
owed to the Client Security Fund is enforceable as provided in Business and Professions Code  
section 6140.5, subdivisions (c) and (d).

### **California Rules of Court, Rule 9.20**

The court also recommends that Respondent be ordered to comply with the requirements  
of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and  
(c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court  
order in this proceeding.

**Costs**

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

**ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that J. Randy Dorcy, State Bar number 170620, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: July \_\_\_\_\_, 2013

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DONALD F. MILES  
Judge of the State Bar Court